

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GARY KING,

Plaintiff,

v.

JOANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

Civil Action No. 04-374 Erie

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on August 24, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 5], filed on September 2, 2005, recommended that the Plaintiff's complaint [Doc. No. 1] be dismissed for failure to prosecute. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendant. Objections were filed by Plaintiff on September 8, 2005. After de novo review of the petition and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 22nd day of September, 2005;

IT IS HEREBY ORDERED that the Court declines to adopt the Report and Recommendation [Doc. No. 5] of Magistrate Judge Baxter, filed on September 2, 2005, as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge